

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN DUANE GRIMES**, on January 19, 2001 at 9:15 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: Sen. Lorents Grosfield, Chairman (R)
Sen. Mike Halligan (D)

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 25, 1/5/2001, SB 29,
1/16/2001

HEARING ON SB 29

Sponsor: SEN. WALT McNUTT, SD 50, SIDNEY

Proponents: Chuck Hunter, Administrator of Child and Family Services in the Department of Health

Opponents: None

Opening Statement by Sponsor:

SEN. WALT McNUTT, SD 50, SIDNEY, opened on SB 29 saying that it was at the request of Health and Human Services. He said there was confusion between the statutes regarding child abuse and

neglect, and the youth court act. Montana code stated that youth court had exclusive, original jurisdiction of all proceedings under the Montana Youth Court Act, when a youth had been judged a youth in need of care. However, if the youth was alleged to be a youth in need of care, the petition must be filed under the child abuse and neglect statute. It got very confusing. A youth could not be determined to be a youth in need of care under petition, while under the Youth Court Act. This bill removed the language, 'youth in need of care' from the Youth Court Act. Chuck Hunter would provide further detail.

Proponents' Testimony:

Chuck Hunter, Administrator of Child and Family Services in the Department of Health, said it was requested by his department and that they tried to eliminate confusion between kids in the juvenile corrections system and kids in the child abuse and neglect system. Two statutory schemes existed: 1) Youth Court Act, set-up to deal with kids who had come into contact with the law and had to be dealt with in terms of the juvenile corrections system. They were typically dealt with in terms of the context of names of delinquent youth, or youth in need of intervention. 2) Child Abuse and Neglect statutes dealt with kids who were youth in need of care. They had been abused or neglected and they were not in that juvenile justice arena. They needed to be dealt with under the child abuse and neglect scheme. The reason the bill existed was because in the Youth Court Act, there were a number of references to 'youth in need of care.' Those references had caused confusion for practitioners, attorneys, and judges, as to the proper statutory scheme to deal with a child who was a youth in need of care. He explained that sometimes the references to 'youth in need of care' were abused children, but that confusion had lead to them providing services under the youth in need of care and billed to the Department of Public Health when they should have been billed to the Department of Corrections. Two problems: 1) billing; what was the proper agency who should take care of kids and 2) legal parties' confusion about what statutory scheme was appropriate. This bill removed all reference, except one: from youth court act to youth in need of care. There would be two clear schemes. If abused and neglected, then the child would be dealt with under the District Court and the child abuse neglect statutes would be the way to go. If in conflict with the law, the Youth Court Act and the Department of Corrections would be the proper venue. He noted some drafting oversights and passed out some amendments to cover those: **EXHIBIT (jus15a01)**. In the Youth Court Act, there would be one remaining reference to youth in need of care, which were abused and neglected kids. It directed Corrections or Probation personnel if they determined that a child was a youth in need of

care, ie: they were abused or neglected, to refer those cases to the Department of Public Health. It was left in there at the request of the probation department. The bill carried the support of the Youth Justice Council of the Board of Crime Control.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked what the sections 41-3-1114 and 41-5-344 addressed. **Chuck Hunter, Administrator of Child and Family Services**, said that 41-5-344 was the limitation on placement of a youth in need of care. It was a provision in the Youth Court Act that referred to children who were abused and neglected. That section would be removed and that provision would be inserted into a different bill, SB 116. The section talked about when kids were a youth in need of care, what the proper placement for them would be. In 41-3-1114, abuse and neglect statutes, talked about the continuing jurisdiction of the youth court. Since the youth court was the scheme for corrections, it would be removed from the child abuse and neglect statute.

Closing by Sponsor:

SEN. McNUTT closed on SB 29.

HEARING ON SB 25

Sponsor: **SEN. RIC HOLDEN, SD 1, GLENDIVE**

Proponents: **Mike Hankins, AUUA- Korean Vet**
Hal Manson, American Legion
Larry Longfellow, Veterans of Foreign Wars
Mike Hampson, President of the local chapter
of Vietnam Vets of America
Julie Millam, Christian Coalition
Roger Hagan, Enlisted Officer, Associations
of the National Guard of Montana
Harris Himes, Retired Marine

Opponents: **Daniel Casey, Montana Human Rights Network**
Scott Crichton, ACLU
Roman Kuczer, Vietnam Veteran

Opening Statement by Sponsor:

SEN. RIC HOLDEN, SD 1, GLENDIVE, opened on SB 25 stating that the American flag was more than just a piece of cloth to the people of the country. He mentioned Betsy Ross hand-stitching the stars and said from that beginning, the flag symbolized freedom for all the people, for all time. He said that freedom had been paid for in blood, sweat, and tears. He argued the bill preserved the integrity of the flag in the state of Montana, as well as the nation. He explained that if someone burned the flag in such a manner as to incite a riot, hence endangering the safety of the people of that community, they'd be in violation of this statute. While the Supreme Court had ruled that burning the flag was allowed, they did not rule that it wasn't against public policy for states to declare that a person couldn't burn the flag in such a manner as to incite a riot. The bill created public policy that stated that the flag was a great symbol, deserved recognition, and should not be used as just a piece of cloth to incite a riot.

Proponents' Testimony:

Mike Hankins, AUUA- Korean Vet, wanted to be frank about what the bill said. For many years, until the Vietnam War, the American flag was a sacred symbol; no one would think of burning the flag. However, after the Vietnam War, he felt it became fashionable for people to show their disregard for what America stood for. He wished to express a desire of his and many other veterans, to change the word burn to desecrate. He felt that was necessary because he had seen the flag desecrated in various ways that were equally repulsive to those who respected the flag. He felt that those actions should be a violation of public ordinance, as well as a violation to what many stood for. He said that "rights" had become a watch word for the politically correct, but that there was an issue involved in rights. When he was in Washington addressing a similar issue, a person from the opposing side told him that he was not very politically correct and was a minority. He resented that comment because they were the only minority in the world that by joining that minority, they could be killed or dismembered in battle defending the American flag. He said they were proud of doing that. He showed a picture, **EXHIBIT(jus15a04)**, saying that the soldier holding the flag was a member of his unit, and had died in battle. He felt that these soldiers felt they had a right, protected by the Constitution, that they should have a slight degree of preference. He felt this bill would help protect the rights of those who had served the flag proudly, willingly, and ably, and would also show that this legislature remembered what the veterans did, what they gave, and that they'd never forget.

Hal Manson, American Legion, said that the American Legion felt very strongly about the flag of the United States. He said the organization was made up of veterans of World War I, World War II, Korea, Vietnam, and Desert Storm. The American Legion was the founding group of the Citizens Flag Alliance; a coalition of 140 fraternal, veterans, and civic organizations that existed solely to restore to Congress the right to pass legislation to protect the national flag from physical acts of desecration. He said the national bill had gone through the House three times, but that it failed in the Senate by no more than three votes. Because the bill had not passed, the Citizen's Alliance would continue to fight for that resolution. In the meantime, bills such as this could be used to control the desecration of the American flag at least in Montana until the amendment was passed by the national legislature. He felt it was necessary to have these stop-gap laws in the states until the national Congress passed the bill to change the Constitution.

Larry Longfellow, Veterans of Foreign Wars, supported the bill and asked for its passage.

Mike Hampson, President of the local chapter of Vietnam Vets of America, said he was a 30 year veteran. He had been a member of the honor guard and paraded the flag. He loved the flag and it represented a lot to him. He felt the bill would help.

Julie Millam, Christian Coalition, presented her testimony in support of SB 25, **EXHIBIT(jus15a05)**.

Roger Hagan, Enlisted Officer, Associations of the National Guard of Montana, submitted his testimony in support of SB 25: **EXHIBIT(jus15a02)**. He also presented a poem about the flag to the committee: **EXHIBIT(jus15a03)**.

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Harris Himes, Retired Marine, said he was a member of various military organizations and was an attorney. He felt it was in the government's best interest to keep riots from occurring. He felt flag burning was a sensitive issue that was inflammatory conduct and could incite a riot. For those reasons, he argued the bill shouldn't only be considered a way in which to honor the flag, but also a legal necessity to recognize that it could incite a riot.

Dallas Erickson turned in a Witness Statement in support of SB 25, **EXHIBIT(jus15a09)**.

Opponents' Testimony:

Daniel Casey, Montana Human Rights Network, said the network was a non-governmental organization that consisted of local groups striving to promote human rights and human rights awareness through research, community education, and legislative efforts in the state. He said they held the freedom of speech as a basic human right, and therefore opposed SB 25. He said that by stating "the" flag, the bill used symbolic language, just as burning or desecrating the flag was a symbolic act. He acknowledged that it was offensive to most people, but it was symbolic. He mentioned that these types of bills made those who opposed them seem unappreciative of the sacrifices and the suffering of the veterans. He said he did not intend any disrespect to the veterans in the room by opposing the bill. However, they did not sacrifice and suffer for "the" flag, but for the freedoms, privileges, and the rights which the flag symbolized or represented. One of the rights that the flag represented was the right to burn the flag. By not passing the bill, it would be a practical way to protect the freedom and rights of which a flag is a symbol.

Scott Crichton, American Civil Liberties Union of Montana, presented his testimony opposing SB 25: **EXHIBIT(jus15a06)**. He also submitted John Glenn's testimony in opposition to the Constitutional amendment bill before the Federal Senate Judiciary Committee: **EXHIBIT(jus15a07)**, and a statement by Ivan Warner who also opposed the amendment: **EXHIBIT(jus15a08)**.

Roman Kuczer, Vietnam Veteran, reported he served with the First Calvary Division and the Ninth Infantry Division. He said he was 18 when he enlisted and sacrificed his youth, his innocence, his health, and his friends to fight for his rights and the rights of others to speak and live freely. He argued the Constitution protected the right to free speech and freedom of expression. He didn't want to pander that to someone who was afraid to hear criticism. When he was stationed outside of DC, at the beginning of the anti-war demonstrations at the Pentagon, he said live ammunition was to be issued on the spot if things got out of control. If the order was given, he and his comrades were told to shoot fellow Americans expressing their opinion, as was done at Kent State. Expressing an opinion should not be a crime punishable by imprisonment, or death, or fines. He would be angered to see a flag burned in front of people, but he was just as angered by the idea of sending people to prison for expressing their opinion. His parents lived under Nazi totalitarianism, and he didn't want that for his children, himself, or the people of Montana. He asked the committee to cherish the Constitutional freedom and set the foolish bill aside, and get on with the work at hand, which was to work together to protect Montana's children by funding the education institutions adequately, work together

to improve the economy, and work together to protect the freedom of expression by rejecting the bill.

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL clarified that this bill would help amend the American Constitution to prevent flag burning. **Hal Manson, American Legion**, thought that **SEN. O'NEIL** had misunderstood. He said that until the amendment was passed and ratified by the states to become a part of the Constitution, then this type of a law would be in its stead.

SEN. O'NEIL asked if this would aid the amendment or make it more difficult to get an amendment. **Mr. Manson** said it had no effects at all to the Constitution. The federal bill was being worked on in DC by the Flag Alliance, and the passage of this bill would in no way affect those efforts.

SEN. STEVE DOHERTY wanted to know of any riots in Montana in the last 20 years. **SEN. HOLDEN** responded of some he heard about from his father in the 60s, but he didn't know of any in the last decade.

SEN. DOHERTY asked if he knew of any instances of flag burning in Montana in the last decade. **SEN. HOLDEN** said no, but he couldn't speak to the future either.

SEN. DOHERTY questioned why this bill was proposed if the concern was about conduct and riots in Montana, specifically flag burning causing riots, and no such activities had occurred in the state in the last decade. **SEN. HOLDEN** replied that it was easy to answer; because it meant a lot to the proponents and to his family who served in the military. He said the fact that if someone took a flag down Main Street in Glendive and burned it, it would incite a riot. Therefore, for public safety and looking to the future, it was a good measure to guard against. It showed respect.

SEN. DOHERTY wanted to know if that was the concern, public safety and incitement to riot and conduct which caused criminal acts, then what other bills or statutes had been passed in the last few sessions that dealt specifically with conduct which caused crimes to be committed that were already covered in the area of public safety. **SEN. HOLDEN** said numerous laws addressed public safety and this law would be one of those.

SEN. DOHERTY wondered if it could be demonstrated that Montana laws already sufficiently covered conduct which lead to the breaking of another crime, what was the rational reason for this

bill to exist? **SEN. HOLDEN** said that they wanted to make it perfectly clear that in no way would burning the U.S. flag be allowed in the ways of inciting a riot. He said an astute attorney, without this piece of legislation on the books, could avoid that sort of conviction.

SEN. O'NEIL commented that buffalo guts were thrown on the governor's desk. He wanted to know if that started a riot, would they have been citable under 45-8-104. **Scott Crichton, ACLU**, said he wasn't a lawyer, so he didn't know the answer. However, the proposed bill clouded the existing law, and **SEN. O'NEIL** made a good point that existing law should be reviewed. The existing law said it was incitement to riot if a person purposely and knowingly committed an act or engaged in conduct that urged other persons to riot. Therefore, in **SEN. O'NEIL's** example, it was not urging others to riot, but was a singular act of an individual that was expressing views symbolically. He pointed out it was important to look at what was struck from the bill. Existing law said that such acts or conduct should not include the mere oral or written advocacy of ideas or expression of belief, when the advocacy or expression did not urge the actor to do immediate violence. Now, the language was turned around. It tried to exempt a particular act, saying it was conduct and not speech. He confessed it could be word-smithing, but it didn't lead to the path they should follow. He suspected that if someone was prosecuted under this bill, the courts would still come down and say the law was unconstitutional because it prohibited expression. It said the only thing considered as speech would be something in writing or verbal. Other ways expressed protest and symbolically did that.

SEN. O'NEIL said he thought the object for throwing the buffalo guts was to get people excited, and to get people to do what they wanted to do, maybe even inciting a riot. Would this law make that conduct illegal? Shouldn't it make a difference whether people were throwing buffalo guts or burning a flag? **Mr. Crichton** clarified that **SEN. O'NEIL** was presuming that in taking an action of spilling guts, the actor had the intent of getting people in the room to jump up and down. He said he thought it didn't happen that way. At least under current law, it would have to be proven that the person did it purposely, but also knowing that they were trying to bring the whole place down.

SEN. O'NEIL questioned if under the proposed law, would a person have to actually start a riot? Simply burning the flag would not be punishable by law unless a riot was started. **Mr. Crichton** said he agreed with that assessment.

SEN. DOHERTY asked if anyone knew if this statute, 45-8-401, had been used at all in the last 10 years to bring any sort of charges. He stated it was broad enough that if the consequences of the conduct, and someone purposely and knowingly urged someone else to riot, it already included burning the flag. Therefore, from a law enforcement perspective, had any county attorney used this portion of the law for any purpose. **SEN. HOLDEN** felt that was more of a statement than a question because the law was on the books. If he wanted to repeal this section, that would be a question; would you support repealing this section? He didn't think it was a fair question.

SEN. DOHERTY said it was a question: had any county attorney in Montana, in the last 20 years used this section of law to charge anybody, anywhere, for anything whether it was flag burning, throwing buffalo guts or anything. If it was a pressing, dire consequence, he wanted to know how the law was implemented. If the bill passed, it would be implemented and he wanted to know how it was implemented in the past. **SEN. HOLDEN** said he didn't know the answer to the question.

SEN. AL BISHOP wanted to know how a flag was disposed of when it was tattered, torn, and worn out. **Mr. Manson** said the legion post had an annual flag disposal program done according to law and the customs of the veterans organizations. They had a formation and went through a regular prescribed procedure to burn the flag. It was done without desecration, but was strictly disposed of so that nothing would happen to the flags.

Closing by Sponsor:

SEN. HOLDEN closed on SB 25. He thought the members of the committee knew how important this issue was, especially to those who had served overseas to defend the country. He said it was sad when a body was brought home in a coffin draped with the flag because that person had been protecting the country. He felt it was the least the committee could do to say that the flag on that coffin meant more than just a piece of cloth. He wanted this statute to show respect to those who defended the country.

ADJOURNMENT

Adjournment: 10:09 A.M.

SEN. DUANE GRIMES, Vice Chairman

ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT (jus15aad)